



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,947	11/24/2003	Brian L. McMurray	1373-004	5270
4678	7590	10/04/2005	EXAMINER	
MACCORD MASON PLLC 300 N. GREENE STREET, SUITE 1600 P. O. BOX 2974 GREENSBORO, NC 27402			PIZIALI, ANDREW T	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/720,947

Applicant(s)

MCMURRAY, BRIAN L.

Examiner

Andrew T. Piziali

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-43 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-40, drawn to a fabric, classified in class 442, subclass 203.
  - II. Claims 41-43, drawn to a method for forming a fabric, classified in class 139, subclass 332.
2. Inventions of Group II and Group I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different process. The product as claimed can be made by hand rather than using a warp kitting machine.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. In the event that claims directed to the product are elected, and a product claim is subsequently found allowable, withdrawn process claims that depend from or otherwise include all the limitations of the allowable product claim will be rejoined. Therefore, upon the election of Group I, rejoinder will be considered upon indication of allowable subject matter pursuant to MPEP 821.04.
5. This application also contains claims directed to the following patentably distinct species of the claimed invention:

Art Unit: 1771

Species Group I

Species 1, drawn to fabric, or a method for forming a fabric, wherein the warp knit fabric does not include a spandex yarn.

Species 2, drawn to fabric, or a method for forming a fabric, wherein the warp knit fabric includes a spandex yarn.

Species Group II

Species 1, drawn to fabric, or a method for forming a fabric, wherein the at least one quality includes a color difference.

Species 2, drawn to fabric, or a method for forming a fabric, wherein the at least one quality includes one side having a metallic appearance.

Species 3, drawn to fabric, or a method for forming a fabric, wherein the at least one quality includes a fiber type difference.

Species 4, drawn to fabric, or a method for forming a fabric, wherein the at least one quality includes a fiber size difference.

Species 5, drawn to fabric, or a method for forming a fabric, wherein the at least one quality includes a pattern difference between the first and second sides.

Species 6, drawn to fabric, or a method for forming a fabric, wherein the at least one quality includes a texture difference between the first and second sides.

Species 7, drawn to fabric, or a method for forming a fabric, wherein the at least one quality includes a finish-enhanced difference between the first and second sides.

Species 8, drawn to fabric, or a method for forming a fabric, wherein the at least one quality includes a brushed surface difference between the first and second sides.

Art Unit: 1771

Species 9, drawn to fabric, or a method for forming a fabric, wherein the at least one quality includes a chemically treated difference between the first and second sides.

Species 10, drawn to fabric, or a method for forming a fabric, wherein the at least one quality includes a sueded difference between the first and second sides.

Species 11, drawn to fabric, or a method for forming a fabric, wherein the at least one quality includes a sanded face between the first and second sides.

Species 12, drawn to fabric, or a method for forming a fabric, wherein the at least one quality includes a brightness difference between the first and second sides.

Species 13, drawn to fabric, or a method for forming a fabric, wherein the at least one quality includes an opacity difference between the first and second sides.

Species 14, drawn to fabric, or a method for forming a fabric, wherein the at least one quality includes wicking ability.

Species 15, drawn to fabric, or a method for forming a fabric, wherein the at least one quality includes breathability.

Species 16, drawn to fabric, or a method for forming a fabric, wherein the at least one quality includes water-resistance.

Species 17, drawn to fabric, or a method for forming a fabric, wherein the at least one quality includes stain resistance.

Species 18, drawn to fabric, or a method for forming a fabric, wherein the at least one quality includes comfort.

Species 19, drawn to fabric, or a method for forming a fabric, wherein the at least one quality includes heat transfer.

Art Unit: 1771

Species 20, drawn to fabric, or a method for forming a fabric, wherein the at least one quality includes insulation.

Species 21, drawn to fabric, or a method for forming a fabric, wherein the at least one quality includes cooling.

Species 22, drawn to fabric, or a method for forming a fabric, wherein the at least one quality includes flame retardancy.

Species 23, drawn to fabric, or a method for forming a fabric, wherein the at least one quality includes reflectivity.

6. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, from each of Species Groups I and II, for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-2, 5, 12-15, 17, 21-22 and 34-42 appear to be generic.

7. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

8. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Art Unit: 1771

9. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

10. A telephone call was made to Jinan Glasgow on 9/16/2005 to request an oral election to the above restriction requirement, but did not result in an election being made.

11. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement may be traversed (37 CFR 1.143).

### *Conclusion*


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew T. Piziali whose telephone number is (571) 272-1541. The examiner can normally be reached on Monday-Friday (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1771

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

atp

 a/pz/05  
**ANDREW T. PIZIALI**  
**PATENT EXAMINER**